



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,938	10/27/1999	JOHN S. HENDRICKS	026880.00004	3963
4372	7590	10/19/2007		
ARENT FOX LLP 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			EXAMINER MEUCCI, MICHAEL D	
			ART UNIT 2142	PAPER NUMBER
			NOTIFICATION DATE 10/19/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
IPMatters@arentfox.com  
Patent\_Mail@arentfox.com

## Office Action Summary

Application No.

09/427,938

Applicant(s)

HENDRICKS ET AL.

Examiner

Michael D. Meucci

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 October 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This action is in response to the Request for Continued Examination (RCE) filed 27 July 2007.
2. Claims 1-28 are pending.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 7, 10, 13, 18-22, 25, and 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez (U.S. 4,855,725) in view of Levinson (U.S. 5,404,505).

a. Regarding claim 1, Fernandez teaches: a main memory that stores electronic books for delivery to the subscribers in the system and a queuing processor coupled to the main memory that receives electronic book orders and determines a queue location for an ordered electronic book (line 33 of column 6 through line 35 of column 7 and Fig. 4-5); first queues that temporarily store first sections of electronic books (lines 2-5 of column 7 and Fig. 4); and second queues that temporarily store second sections of electronic books (lines 36-62 of column 7).

While Fernandez teaches delivery to subscribers via an infrared network (lines 16-20 of column 4), Fernandez does not explicitly teach: delivery to subscribers via at

Art Unit: 2142

least one of an internet network, a cable telephone network, and a broadcasting network. However, Levinson discloses: "In summary, the present invention is an information broadcasting system which provides a large number of subscribers access to a large amount of information using one or more satellite transmission channels. The broadcasting system can also use cable television transmission channels or any similarly structured data distribution network," (lines 46-52 of column 2). It would have been obvious for one of ordinary skill in the art at the time of the applicant's invention to deliver to subscribers via at least one of an internet network, a cable telephone network, and a broadcasting network. "The information provided by the basic subscriber service, which will typically include at least 50 gigabytes of data, is available to all subscribers without requiring two way communications between the subscribers and the program supplier station," (lines 60-64 of column 2 in Levinson). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to deliver to subscribers via at least one of an internet network, a cable telephone network, and a broadcasting network in the system as taught by Fernandez.

b. Regarding claim 2, Fernandez teaches: the first and second queues each comprise an on-demand first/second section queue and a popular content first/second section queue (line 33 of column 6 through line 62 of column 7).

c. Regarding claim 3, Fernandez teaches: a priority queue server coupled to the first and second queues, wherein the server empties the first and the second queues based on a priority model (lines 31-53 of column 8).

Art Unit: 2142

d. Regarding claim 7, Fernandez teaches: searching queues for similar electronic book orders; and broadcasting completed electronic book orders simultaneously (lines 13-18 of column 3).

e. Regarding claim 10, Fernandez teaches: an electronic book viewer, the viewer comprising: a receiver that receives electronic books, a transmitter that transmits electronic book orders, and a memory coupled to the receiver that stores the electronic books; and a processor coupled to the receiver and the memory that controls processing on the viewer, wherein the receiver receives broadcasts of first sections of electronic books and stores the first sections in the memory (line 43 of column 2 through line 35 of column 3 and Fig. 3).

f. Regarding claim 13, Fernandez teaches: the electronic books comprise an electronic version of one or more of a printed book, a magazine, a catalog, a periodical, and a newspaper (lines 63-67 of column 1).

g. Claims 18-22, 25, and 27 contain substantially the same limitations as those disclosed in claims 1-3, 7, 10, and 13 and are rejected under the same rationale.

5. Claims 4-5 and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 3 above, in view of what is extremely well known in the art at the time of the applicant's invention.

a. Regarding claim 4, Fernandez teaches: emptying the on-demand first section queue and emptying the popular content first section queue (lines 31-53 of column 8). Fernandez does not explicitly teach: using a round robin manner to empty

the queues. However, Official Notice is taken of using a round robin manner to empty the queues. A "round robin manner" as claimed is defined as taking turns, which is inherent in this instance. This is clearly shown by Chen et al. (U.S. 6,611,531 B1) hereinafter referred to as Chen on lines 45-50 of column 13 which describes priority queuing. While Chen may or may not be considered prior art, the concept of taking turns or any type of ordered control when deleting content is implicit.

b. Regarding claim 5, Fernandez teaches: the priority model includes a timing module, wherein the timing module determines a time an electronic book is stored in the first and the second queues and wherein a maximum time is exceeded, the server transmits the electronic book out of order (lines 31-50 of column 8).

c. Claim 23 contains substantially the same limitations as those disclosed in claims 4-5 and are rejected under the same rationale.

6. Claim 6 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 3 above, in view of Kigami et al. (JP04032497) hereinafter referred to as Kigami.

a. Regarding claim 6, Fernandez does not explicitly teach: determining a length of a each queue; and transmitting an electronic book from a queue having a longest length. However, Kigami discloses: "A detecting part 361 of a queue length detection means 36 reads a queue length storing file 35, and an informing part 362 of the means 36 informs a transaction inflow controller 2 of the queue length. This queue length is compared with the largest queue length. If the former length is larger than the

latter one, a discriminating part 25 discriminates that the start of the transaction processing is delayed. Meanwhile a message transmission part 27 sends the information to a terminal computer 1 to show that the transaction data were not received. When this information is received by a reception part 12 of the computer 1, an output means 13 outputs the contents of the information to an output device 14," (Constitution of English Translation). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to determine queue lengths and transmit an electronic book from a queue having a longest length. Obvious combinations of the two references would be motivated in that the two are both dealing with multiple queues and are clearly from the same field of endeavor. It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to determine queue lengths and transmit an electronic book from a queue having a longest length in the system as taught by Fernandez.

7. Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 3 above, in view of Payton (U.S. 5,790,935).

a. Regarding claim 8, Fernandez does not explicitly teach: an internet website; a web server coupled to the internet website; a delivery server coupled to the web server; and a transaction server coupled to the web server, wherein the queuing processor receives electronic book orders from the transaction server and the delivery server receives ordered electronic books from the queue priority server. However, Payton discloses: "As shown in FIG. 2, a virtual on-demand digital delivery system 22

Art Unit: 2142

includes a central distribution server 24, a high bandwidth digital transport system 26, a local server 28 for each subscriber in the group, and a low bandwidth back channel 30. The high bandwidth transport system 26 and the low bandwidth back channel 30 can be replaced by a single bidirectional channel as shown in detail in FIG. 9. In response to a subscriber's request, the delivery system 22 delivers the requested item to the subscriber's playback device 32 such as a television, audio system or computer." (lines 45-54 of column 4). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have an internet website; a web server coupled to the internet website; a delivery server coupled to the web server; and a transaction server coupled to the web server, wherein the queuing processor receives electronic book orders from the transaction server and the delivery server receives ordered electronic books from the queue priority server. Obvious combinations of the two references would be motivated in that the two are both dealing with serving electronic book orders and are clearly from the same field of endeavor. It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have an internet website; a web server coupled to the internet website; a delivery server coupled to the web server; and a transaction server coupled to the web server, wherein the queuing processor receives electronic book orders from the transaction server and the delivery server receives ordered electronic books from the queue priority server in the system as taught by Fernandez.



Art Unit: 2142

8. Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 1 above, further in view of Himbeault et al. (U.S. 6,556,561 B1) hereinafter referred to as Himbeault.

Fernandez does not explicitly teach: a service time guarantee; and the processor establishing a connection with the associated data processing system if the pending service time exceeds the guaranteed service time guarantee. However, Himbeault discloses: "As the maximum wait time is approached, the node forces a collision by transmitting even though it senses another node is already transmitting to force the network into a quiet mode. It then starts transmitting the real time data prior to other nodes beginning transmission," (abstract).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have a service time guarantee; and the processor establishing a connection with the associated data processing system if the pending service time exceeds the guaranteed service time guarantee. "A node on a collision detection protocol based network forces collisions to gain control of the network when it has real time data that needs to be transferred to another node on the network, and then begins transmitting the real time data prior to other nodes gaining control of the network," (abstract of Himbeault). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have a service time guarantee; and the processor establishing a connection with the associated data processing system if the pending service time exceeds the guaranteed service time guarantee in the system as taught by Fernandez.

9. Claims 11 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 10 above, further in view of Kawakura et al. (U.S. 5,903,901) hereinafter referred to as Kawakura.

Fernandez does not explicitly teach: when a first section stored in the memory is accessed or a link in the first section of the electronic book is accessed, the processor generates an order for a corresponding second section, and the transmitter transmits the order. However, Kawakura discloses: "According to one aspect of the present invention there is provided a client device for acquiring and displaying hypermedia documents in a hypermedia document processing system, comprising: display means for interpreting and displaying a first page of the hypermedia documents acquired from one server; first transmission means for transmitting a first message requesting a second page of the hypermedia documents to be referred from the first page currently displayed by the display means to a request target server which stores the second page," (lines 6-15 of column 4).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the processor generate an order for a corresponding second section and the transmitter transmits the order when a first section stored in the memory or a link in the first section of the electronic book is accessed. "It is another object of the present invention to provide a message transmission scheme and a relay server device capable of notifying an information concerning an anchor utilization to the source server, according to a page transfer record and a page request transfer record,"

Art Unit: 2142

(lines 1-5 of column 4 in Kawakura). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the processor generate an order for a corresponding second section and the transmitter transmits the order when a first section stored in the memory or a link in the first section of the electronic book is accessed in the system as taught by Fernandez.

10. Claims 14-17, 24, 26 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Fernandez and Levinson as applied to claim 1 above further in view of Payton.

a. Regarding claims 14-15, Fernandez does not explicitly teach: specified books and first sections of specified books are broadcast on a cyclical basis. However, Payton discloses: "As shown in FIG. 4, each local server's predictive filter 54 updates its list 44 of recommended items in response to both a local periodic refresh via the backchannel 30 (step 108) and a broadcast over the digital transport system 26 (step 110). In response to the periodic trigger, the local server 28 determines whether new subscriber profile data or billing data exists (step 112)," (lines 61-67 of column 7). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to specify books and first sections of specified books broadcast on a cyclical basis. "In response to a direct broadcast, the prediction filter 54 extracts the prediction ratings changes and newly recommended items from the server 24 (step 120). Thereafter, the prediction filter updates the list 44 of recommended items (step 122)," (lines 5-10 of column 10 in Payton). It is for this reason that one of ordinary skill in the

Art Unit: 2142

art at the time of the applicant's invention would have been motivated to specify books and first sections of specified books are broadcast on a cyclical basis in the system as taught by Fernandez.

b. Regarding claim 16, Fernandez does not explicitly teach: (books) to be broadcast are determined by reference to one of electronic books read data, demographic data, and subscriber preferences. However, Payton discloses: "The prediction filter also monitors the broadcast television programs viewed by the subscriber and learns the subscriber's regular viewing habits to implement a "smart" VCR. Well known neural network algorithms can be used to learn the subscriber's viewing habits and to predict which programs are regularly viewed," (lines 37-43 of column 8).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have broadcasts determined by reference to one of electronic books read data, demographic data, and subscriber preferences. "If the received item is a broadcast television signal it will not be on the subscriber's recommended list (step 136). In step 144, the filter determines whether the smart VCR is enabled and whether the item is on the subscriber's regular viewing list. If so, the filter deletes the lowest priority item (step 140) and routes it to the local storage (step 130)," (lines 43-49 of column 8 in Payton). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have broadcasts determined by reference to one of electronic books read data, demographic data, and subscriber preferences in the system as taught by Fernandez.

c. Regarding claim 17, Fernandez teaches: a virtual on-demand menu (lines 40-50 of column 6). Fernandez does not explicitly teach: the menu broadcast with a broadcast of one of an electronic book and a first section of an electronic book, wherein the menu lists electronic books available on the system. However, Payton discloses: "To request an item, the subscriber interface 58 displays the list 44 of recommended items, their respective average ratings for the subscriber's group, and any comments on the video display. The subscriber can either select one of the displayed items using the control device or request a menu of the remaining available items. Alternately, the initial menu might show all offerings with the recommended items highlighted," (lines 26-33 of column 6).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to have the menu broadcast with a broadcast of one of an electronic book and a first section of an electronic book, wherein the menu lists electronic books available on the system. "By recommending the locally stored items to the subscriber and making them easy to select, the delivery system 22 reduces the probability that an on-demand request will be made from the central distribution server 24," (lines 33-36 of column 6 in Payton). It is for this reason that one of ordinary skill in the art at the time of the applicant's invention would have been motivated to have the menu broadcast with a broadcast of one of an electronic book and a first section of an electronic book, wherein the menu lists electronic books available on the system in the system as taught by Fernandez.

Art Unit: 2142

d. Claims 24, 26, and 28 contain substantially the same limitations as those disclosed in claims 14-17 and are rejected under the same rationale.

***Response to Arguments***

11. Applicant's arguments filed 27 July 2007 have been fully considered but they are not persuasive.

12. (A) In response to applicant's argument that Fernandez does not teach first and second queues, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Structurally, the queues of the applicant's invention provide no additional functionality that any type of list, or in the cited art, memory could provide. As such, the rejection remains proper and is maintained by the examiner.

13. (B) The applicant's remaining arguments are directed towards newly claimed subject matter which has been addressed in the above rejections.

***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Meucci at (571) 272-3892. The examiner can normally be reached on Monday-Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell, can be reached at (571) 272-3868. The fax phone number for this Group is 571-273-8300.

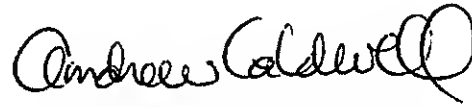
Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [michael.meucci@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 2142

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Andrew Caldwell". The signature is fluid and cursive, with a large loop at the end.

ANDREW CALDWELL  
SUPERVISORY PATENT EXAMINER